STATE OF MICHIGAN

COURT OF APPEALS

GERALD T. WELLS,

Plaintiff-Appellee,

v

CHILDREN'S HOSPITAL OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
May 9, 2006

No. 259942
Wayne Circuit Court
LC No. 04-405276-NO

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court's order denying its motion for summary disposition. We reverse. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff went to defendant's premises to visit his granddaughter. Plaintiff parked in defendant's parking garage, then took the elevator to the ground floor, where he noticed snow and slush in the crosswalk leading from the garage to the hospital. He could not see the pavement through the snow and slush. According to plaintiff, the whole floor was in this poor condition, so he chose to traverse the crosswalk, proceeding at his normal pace. Plaintiff slipped and fell in the crosswalk, and then noticed that there was ice under the snow and slush. He suffered a broken ankle, which required surgery.

Plaintiff filed suit, asserting that defendant should have discovered and remedied the dangerous condition. Defendant moved for summary disposition on the ground that it had no duty to protect plaintiff from what was an open and obvious, and not unreasonably dangerous, condition. Defendant further contended that there was no evidence regarding the amount of time the condition had existed, and therefore no basis on which to find that it acted unreasonably by failing to remedy the condition. The circuit court denied defendant's motion on the basis of this Court's decision in *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99, 107; 689 NW2d 737 (2004).

This Court's decision in *Kenny* was, however, reversed for the reasons stated in the dissenting Court of Appeals opinion. *Kenny v Kaatz Funeral Home, Inc*, 472 Mich 929; 697 NW2d 526 (2005). Plaintiff seeks to distinguish *Kenny* on the basis that in *Kenny* the plaintiff observed other members of her party hold onto to the car while walking, thus indicating that

there were slippery conditions under the light covering of snow. The question, however, is whether an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Kenny*, 264 Mich App 115, 120 (*dissenting opinion*). Given plaintiff's testimony, there was no genuine issue of material fact; the danger and risk were open and obvious.

Further, plaintiff has not shown the presence of special aspects constituting an exception to the open and obvious doctrine. *Lugo v Ameritech Corp Inc*, 464 Mich 512, 517; 629 NW2d 384 (2001); *Mann v Shusteric Enterprises Inc*, 470 Mich 320, 332; 683 NW2d 573 (2004). The slippery condition did not present the type of circumstances contemplated by *Lugo*. Unlike falling into a thirty foot deep pit, it cannot be expected that a typical person falling on ice would suffer severe injury or death. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 7; 649 NW2d 392 (2002). Further, the condition was not unavoidable. There were other ways to enter the hospital.

Reversed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot